

1 **H. B. 3033**

2
3 (By Delegates Shott, Howell, O'Neal, E. Nelson,
4 Walker, Moore, McCuskey and Ellington.)

5
6 [Introduced March 21, 2013; referred to the
7 Committee on Roads and Transportation then Finance.]

8 **FISCAL
NOTE**

9
10 A BILL to repeal §11-15-18b of the Code of West Virginia, 1931, as
11 amended; to repeal §11-15A-13a of said code; to amend said
12 code by adding thereto a new section, designated §11-14C-49;
13 to amend and reenact §11-15-3 of said code; and to amend said
14 code by adding thereto a new section, designated §11-15-35,
15 all relating to taxes on motor fuels, aviation fuels and
16 consumer sales and service.

17 *Be it enacted by the Legislature of West Virginia:*

18 That §11-15-18b of the Code of West Virginia, 1931, as
19 amended, be repealed; that §11-15A-13a of said code be repealed;
20 that said code be amended by adding thereto a new section,
21 designated §11-14C-49; that §11-15-3 of said code be amended and
22 reenacted; and that said code be amended by adding thereto a new
23 section, designated §11-15-35, all to read as follows:

24 **ARTICLE 14C. MOTOR FUEL EXCISE TAX.**

25 **§11-14C-49 Article to be repealed January 1, 2014.**

1 Each and every provision of this article is repealed for all
2 tax periods beginning on and after January 1, 2014: Provided, That
3 tax liabilities arising for taxable periods ending before January
4 1, 2014, are determined, paid, administered, assessed and collected
5 as if the tax imposed by this article had not been repealed, and
6 the rights and duties of the taxpayer and the State of West
7 Virginia are fully and completely preserved.

8 **ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.**

9 **§11-15-3. Amount of tax; allocation of tax and transfers.**

10 (a) *Vendor to collect.* -- For the privilege of selling
11 tangible personal property or custom software and for the privilege
12 of furnishing certain selected services defined in sections two and
13 eight of this article, the vendor shall collect from the purchaser
14 the tax as provided under this article and article fifteen-b of
15 this chapter, and shall pay the amount of tax to the Tax
16 Commissioner in accordance with the provisions of this article or
17 article fifteen-b of this chapter.

18 (b) *Amount of tax.* -- Effective, January 1, 2014, the general
19 consumer sales and service tax imposed by this article shall be at
20 the rate of ~~six~~ eight cents on the dollar of sales or services,
21 excluding gasoline and special fuel sales, which remain taxable at
22 the rate of five cents on the dollar of sales: Provided, That two
23 cents of each eight cents of tax collected under the provisions of

1 this section after deducting the amount of any refunds lawfully
2 paid, shall be deposited in the "Road Fund" in the State
3 Treasurer's office, and used only for the purpose of construction,
4 reconstruction, maintenance and repair of highways, and payment of
5 principal and interest on state bonds issued for highway purposes.

6 (c) ~~Calculation tax on fractional parts of a dollar until~~
7 ~~January 1, 2004. --- There shall be no tax on sales where the~~
8 ~~monetary consideration is five cents or less. The amount of the tax~~
9 ~~shall be computed as follows:~~

10 (1) ~~On each sale, where the monetary consideration is from six~~
11 ~~cents to sixteen cents, both inclusive, one cent.~~

12 (2) ~~On each sale, where the monetary consideration is from~~
13 ~~seventeen cents to thirty three cents, both inclusive, two cents.~~

14 (3) ~~On each sale, where the monetary consideration is from~~
15 ~~thirty-four cents to fifty cents, both inclusive, three cents.~~

16 (4) ~~On each sale, where the monetary consideration is from~~
17 ~~fifty-one cents to sixty-seven cents, both inclusive, four cents.~~

18 (5) ~~On each sale, where the monetary consideration is from~~
19 ~~sixty-eight cents to eighty-four cents, both inclusive, five cents.~~

20 (6) ~~On each sale, where the monetary consideration is from~~
21 ~~eighty-five cents to one dollar, both inclusive, six cents.~~

22 (7) ~~If the sale price is in excess of one dollar, six cents on~~
23 ~~each whole dollar of sale price, and upon any fractional part of a~~
24 ~~dollar in excess of whole dollars as follows: One cent on the~~

~~1 fractional part of the dollar if less than seventeen cents; two
2 cents on the fractional part of the dollar if in excess of sixteen
3 cents but less than thirty four cents; three cents on the
4 fractional part of the dollar if in excess of thirty-three cents
5 but less than fifty one cents; four cents on the fractional part of
6 the dollar if in excess of fifty cents but less than sixty-eight
7 cents; five cents on the fractional part of the dollar if in excess
8 of sixty-seven cents but less than eighty-five cents; and six cents
9 on the fractional part of the dollar if in excess of eighty-four
10 cents. For example, the tax on sales from one dollar and one cent
11 to one dollar and sixteen cents, both inclusive, seven cents; on
12 sales from one dollar and seventeen cents to one dollar and
13 thirty-three cents, both inclusive, eight cents; on sales from one
14 dollar and thirty-four cents to one dollar and fifty cents, both
15 inclusive, nine cents; on sales from one dollar and fifty-one cents
16 to one dollar and sixty-seven cents, both inclusive, ten cents; on
17 sales from one dollar and sixty-eight cents to one dollar and
18 eighty-four cents, both inclusive, eleven cents and on sales from
19 one dollar and eighty-five cents to two dollars, both inclusive,
20 twelve cents: Provided, That beginning the first day of January,
21 two thousand four, tax due under this article shall be calculated
22 as provided in subsection (d) of this subsection and this
23 subsection (c) does not apply to sales made after the thirty-first
24 day of December, two thousand three.~~

1 *Calculation of tax on fractional parts of a dollar after*
2 *December 31, 2003. -- Beginning January 1, 2004, the tax*
3 *computation under subsection (b) of this section shall be carried*
4 *to the third decimal place, and the tax rounded up to the next*
5 *whole cent whenever the third decimal place is greater than four*
6 *and rounded down to the lower whole cent whenever the third decimal*
7 *place is four or less. The vendor may elect to compute the tax due*
8 *on a transaction on a per item basis or on an invoice basis*
9 *provided the method used is consistently used during the reporting*
10 *period.*

11 ~~(e)~~ (d) *No aggregation of separate sales transactions,*
12 *exception for coin-operated devices. -- Separate sales, such as*
13 *daily or weekly deliveries, shall not be aggregated for the purpose*
14 *of computation of the tax even though the sales are aggregated in*
15 *the billing or payment therefor. Notwithstanding any other*
16 *provision of this article, coin-operated amusement and vending*
17 *machine sales shall be aggregated for the purpose of computation of*
18 *this tax.*

19 ~~(f)~~ (e) *Rate of tax on certain mobile homes. --*
20 *Notwithstanding any provision of this article to the contrary,*
21 *after December 31, 2003, the tax levied on sales of mobile homes*
22 *to be used by the owner thereof as his or her principal year-round*
23 *residence and dwelling shall be an amount equal to six percent of*
24 *fifty percent of the sales price.*

1 ~~(g)~~ (f) *Construction; custom software.* -- After December 31,
2 2003, whenever the words "tangible personal property" or "property"
3 appear in this article, the same shall also include the words
4 "custom software".

5 ~~(h) Computation of tax on sales of gasoline and special fuel.~~
6 ~~-- The method of computation of tax provided in this section does~~
7 ~~not apply to sales of gasoline and special fuel.~~

8 **§11-15-35. Tax on aviation fuel effective January 1, 2004.**

9 (a) General. -- Effective January 1, 2004, all sales of
10 aviation fuel are subject to an excise tax composed of a flat rate
11 equal to \$.205 per invoiced gallon plus the tax imposed by this
12 article. Sales of aviation fuel upon which the tax imposed by this
13 article has been paid shall not thereafter be again taxed under the
14 provisions of this article. This section is construed so that all
15 gallons of aviation fuel sold and delivered, or delivered, in this
16 state are taxed one time.

17 (b) Measure of tax. -- The measure of tax imposed by this
18 article on sales of aviation fuel is the average wholesale price
19 defined as the single, statewide average per gallon wholesale
20 price, rounded to the third decimal (thousandth of a cent),
21 exclusive of state and federal excise taxes on each gallon of
22 aviation fuel, as determined by the Tax Commissioner from
23 information furnished by suppliers, importers and distributors of

1 aviation fuel in this state, or other information regarding
2 wholesale selling prices as the Tax Commissioner may gather, or a
3 combination of information: *Provided*, That on and after January 1,
4 2010, in no event shall the average wholesale price be determined
5 to be less than \$2.34 per gallon of aviation fuel: *Provided*
6 *however*, That on and after January 1, 2011, the average wholesale
7 price shall not vary by more than ten percent from the average
8 wholesale price of aviation fuel as determined by the Tax
9 Commissioner for the previous calendar year.

10 (c) *Definitions*. -- For purposes of this article, the term
11 "Aviation fuel" means aviation gasoline or aviation jet fuel.

12 "Aviation gasoline" means motor fuel designed for use in the
13 operation of aircraft other than jet aircraft, and sold or used for
14 that purpose.

15 "Aviation jet fuel" means motor fuel designed for use in the
16 operation of jet or turbo-prop aircraft and sold or used for that
17 purpose.

18 (d) *Tax return and tax due*. -- The tax imposed by this article
19 on sales of aviation fuel shall be paid by each taxpayer on or
20 before the last day of the calendar month by check, bank draft,
21 certified check or money order payable to the Tax Commissioner for
22 the amount of tax due for the preceding month, notwithstanding any
23 provision of this article to the contrary: *Provided*, That the
24 commissioner may require all or certain taxpayers to file tax

1 returns and payments electronically. The return required by the
2 commissioner shall accompany the payment of tax: *Provided*, however,
3 That if no tax is due, the return required by the commissioner
4 shall be completed and filed on or before the last day of the
5 month.

6 (e) *Compliance*. -- To facilitate ease of administration and
7 compliance by taxpayers, the Tax Commissioner shall require persons
8 liable for the tax imposed by this article on sales of aviation
9 fuel to file a combined return and make a combined payment of the
10 tax due under this article on sales of motor fuel and the tax due
11 under article fourteen-c of this chapter on motor fuel. In order to
12 encourage use of a combined return each month and the making of a
13 single payment each month for both taxes, the due date of the
14 return and tax due under said article is the last day of each
15 month, notwithstanding any provision in said article to the
16 contrary.

17 (f) *Dedication of tax*. -- All tax collected on the sale of
18 aviation fuel after deducting the amount of any refunds lawfully
19 paid shall be deposited in the State Treasurer's office and
20 transferred to the State Aeronautical Commission to be used for the
21 purpose of matching federal funds available for the reconstruction,
22 maintenance and repair of public airports and airport runways.

NOTE: The purpose of this bill is to provide for future

repeal of provisions of the Motor Fuel Excise Tax; to increase the consumer sales and use tax to eight percent, dedicating the increased revenue from that tax to the Road Fund; to provide for aviation fuel tax, and to dedicate that revenue to runway repair and maintenance.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

§11-14c-49 and §11-15-35 are new; therefore, they have been completely underscored.